

REMARKS/ARGUMENTS

Applicants respectfully request the Examiner to reconsider his final rejection for the reasons set forth hereinbelow.

On Page 3 of the Examiner's Final Rejection, specifically the paragraph bridging pages 3 and 4, the Examiner sets forth the following:

"Applicant's arguments with respect to claims 39-51 have been considered but they are not persuasive. Regarding the argument that the combination of the references would destroy the purpose of the primary reference, the rejection does not rely on the primary reference for the purpose of that reference. The rejection relies on the structure for purposes of examination."

The Examiner's position is untenable and flies in the face of established case law. It is clearly established in the case law that references are not properly combinable or modifiable if their intended function is destroyed. "A §103 rejection based upon a modification of a reference that destroys the intent, purpose or function of the invention disclosed in the *reference*, is not proper and the prima facie case of obviousness cannot be properly made. In short, there would be *no technological motivation* for engaging in the modification or change. To the contrary, there would be a disincentive. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). The Federal Circuit observed in *Gordon* that if the prior art filter-separator were physically inverted, as would be necessary to meet claim limitation, the reference filter would become impenetrable and fluid would be trapped rather than separated."

The Examiner's position as set forth in his rejection and his response to Applicants' previously submitted arguments fly in the face of the established case law set forth by The Federal Circuit.

The Examiner's rejection is improper as the references cannot be properly combined in light of the fact that the modification as proposed by the Examiner would destroy the intended function of the primary reference.

In light of the foregoing, it is submitted that the Examiner should withdraw his rejection and issue a formal notice of allowance.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,

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Date: November 20, 2008